

Message Text

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71

ACTION L-03

INFO OCT-01 EUR-25 ISO-00 PM-07 INR-10 DODE-00 OMB-01

NSC-10 SPC-03 SS-20 RSC-01 DRC-01 /082 W

----- 017720

R 161700Z NOV 73

FM AMEMBASSY MADRID

TO SECSTATE WASHDC 7273

UNCLAS MADRID 6749

FOLLOWING TEL REPEATED FOR YOUR INFO:

R 131000Z JUN 73

FM 16AF TORREJON AB SPAIN

TO OSAF WASHDC/ISA

MSCELM BREMERHAVEN

CSAF WASHDC/JACI

JUSMG MAAG MADRID SPAIN

AMEMBASSY MADRID

UNCLAS FOUO/JA

SUBJ: SPANISH PORT GENERAL SERVICES TARIFF

(TARIFF G-3) ON U.S. CARGOES.

1. THE PURPOSE OF THIS MESSAGE IS TO PROVIDE THE BACKGROUND INFORMATION AND CURRENT STATUS ON THE ABOVE REFERENCED TARIFF. PARAS IA, IB, AND 1C OF THE TAX RELIEF ANNEX OF THE MUTUAL DEFENSE ASSISTANCE AGREEMENT (MDAA), DATED 26 SEPT 1953, EX-EMPTS THE USG FROM TAXATION ON MILITARY CRGO SHIPPED IN UNDER THE MDAA OR OTHERWISE. PARA 1A PROVIDES IN PART, "...THE ACTIVITIES AND EXPENDITURES CARRIED ON FOR THE COMMON DEFENSE UNDER THE TERMS OF THIS AGREEMENT OR OTHERWISE, WILL BE EXEMPT FROM TAXATION (INCLUDING SURCHARGES, CONTRIBUTIONS, OR OTHER CHARGES OF ANY NATURE, OTHER THAN REASONABLE COMPENSATION WHICH MAY BE MADE BY THE UNITED STATES FOR SERVICES REQUESTED AND RECEIVED) BY OR FOR THE BENEFIT OF THE SPANISH GOVERNMENT, POLITICAL SUBDIVISIONS THEREOF, OR QUASI-GOVERNMENTAL ORGANIZATION". PARA 1B PROVIDES THAT THIS RELIEF WILL APPLY IN ALL CASES IN WHICH THE U.S. IS FINALLY SUBJECT TO THE PAYMENT OF THE TAX. THIS TAX RELIEF ANNEX HAS BEEN IN EFFECT SINCE 26 SEPT 1953 AND WAS INCORPORATED BY REFERENCE INTO THE PRESENT AGREE-UNCLASSIFIED

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MENT (THE AGREEMENT OF FRIENDSHIP AND COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND SPAIN) BY LETTER DATED 25 SEPT 1970, SIGNED BY THE U.S. AMBASSADOR AND THE MINISTER OF FOREIGN AFFAIRS FOR SPAIN.

2. ON 27 JAN 1967 THE SPANISH GOVERNMENT ISSUED BOLETIN OFICIAL DEL ESTADO NO. 23. THIS AUTHORIZES A TARIFF CHARGE FOR "...THE UTILIZATION OF MARITIME INSTAALLATIONS DOCK AND CARGO HANDLING AREAS AND RELATED GENERAL SERVICES OF CUSTODY, THAT IS, FOR EMBARKATION, DEBARKATION AND TRANSHIPMENT OF CARGO". DURING FEB 1971, AFTER THREE MONTHS OF PRESIMINARY CORRESPONDENCE AND DISCUSSION, THE PORT AUTHORITY OF CADIZ, SPAIN (JOP) BEGAN LEVYING A CHARGE ON U.S. MILITARY CARGOES ENTERING THAT PORT. JOP MAINTAINS THAT THE CHARGES ARE FOR PORT SERVICES AND NOT A TAX AS THEY WERE FORMERLY CONSIDERED. JOP'S POSITION IS THAT THE TAX WASCHANGED TO A SERVICE CHARGE BY BOLETIN OFICIAL DEL ESTADO NO 23.

3. MANIPULACION PORTUARIA DE CARGOS, S.A. (MAPOR), HAS CONTRACTED WITH THE U.S. TO PROVIDE STEVEDORING AND OTHER RELATED PORT SERVICES FOR U.S. CARGO COMING INTO SPANISH PORTS, MOST OF WHICH COMES THROUGH THE PORT OF CADIZ. IN ADDITION TO PROVIDING STEVEDORING SERVICES, MAPOR PAYS THE BILLS FOR OTHER SERVICES AND THE U.S. REIMBURSES THEM FOR THESE SERVICES PLUS A FIVE PERCENT (5PERCENT) ADMINISTRATIVE FEE. JOP NOTIFIED MAPOR, AS THE U.S. AGENT FOR PAYMENT OF SERVICES. THAT THEY WOULD START LEVYING THIS TARIFF ON ALL NON-CONTAINERIZED CARGO WHICH COMPRISES APPROXIMATELY 15 PERCENT OF ALL U.S. CARGO) AS OF 1 FEB 1971. SINCE THAT DATE JOP HAS BEEN SUBMITTING INVOICES FOR THE TARIFF ASSESSMENTS OF MAPOR. CHARGES FOR CONTAINERIZED CARGO (WHICH COMPRISES APPROXIMATELY 85 PERCENT OF ALL U.S. CARGO) ARE LEVIED AGAINST AGENTS OF THE TWO PRIMARY CONTAINER CARRIERS (AMERICAN EXPORT LINES AND GRACE PRUDENTIAL).

4. THE COMMANDING OFFICER, U.S. ARMY TRANSPORTATION TERMINAL UNIT (USATTU), CADIZ, ADVISES THAT THE USG LEASES THE PORT FACILITY, INCLUDING THE WAREHOUSES USED BY THE USG. THE USG HAS PAID FOR ALL ADDITIONAL SERVICES REQUESTED AND RECEIVED. THE USG HAS REQUESTED NO SERVICES FROM JOP EXCEPT THE OCCASIONAL RENTAL OF A CRANE.

5. IN RESPONSE TO A REQUEST BY USAFE PROCUREMENT CENTER, TORREJON AB, SPAIN, THE CINCUSAFE (LGPP) APPROVED A PROPOSAL FOR MAPOR. IN AGREEMENT WITH JOP, TO DEPOSIT SUMS IN SATISFACTION OF THE TARIFF IN AN ESCROW ACCOUNT WITH A COMMERICAL BANK FACILITY UNDER CONDITIONS THAT SAID FUNDS WOULD NOT BE RELEASED TO JOP OR RETURNED TO U.S. GOVERNMENT UNTIL FINAL RESOLUTION OF THE LIABILITY QUESTION.
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UNDER THE PRESENT PROCEDURE USG AGENCIES PAY MAPOR THE AMOUNT OF THE TARIFF EVIDENCED BY INVOICES RECEIVED BY MAPOR FROM JOP. MAPOR DEPOSITS THESE FUNDS WITH THE BANK OF BILBAO WHICH ISSUED A BANK GUARANTEE IN FAVOR OF JOP FOR THE AMOUNT DEPOSITED.

6. AS OF THE DATES INDICATED, TOTAL BILLINGS AND CHARGES ARE AS FOLLOWS:

A. NON-CONTAINERIZED (BREAKBULK) CARGO:

(1) REIMBURSEMENT OF MAJOR FOR PAYMENT INTO ESCROW:

FEB-JUN 71 775,159 PTAS.

JUL-SEP 71 402,030 PTAS.

OCT-DEC 71 267,054 PTAS.

JAN-MAR 72 278,095 PTAS.

TOTAL 1,702,338 PTAS.

(2) BILLED BUT NOT PAUD:
APR-JUN 72 242,731.65 PTAS.
JUL-SEP 72 377,744.83 PTAS.
OCT-DEC 72 296,389.00 PTAS.
JAN-MAR 73 277,533.00 PTAS.
TOTAL 1,194,418.48 PTAS.
TOTAL NON-CONTAINERIZED 3,186.756.48 PTAS.
(\$54,944.99 AT 58)

B. CONTAINERIZED CARGO-NOT IN ESCROW:

(1) AMERICAN EXPORT LINES:
1 FEB 71-5 MAY 73 16,728,823 PTAS
(2) SEALAND (NOT CURRENTLY ACTIVE):
NOV 71-FEB 72 1,618,089 PTAS.
(3) GRACE PRUDENTIAL:
28 DEC 71-28 MAR 73 1,566.092 PTAS. (NOTE)
TOTAL CONTAINERIZED 19,913,004.00 PTAS
(\$343,328.00 AT 58)
GRAND TOTAL 23,099,760.48 PTAS.
(\$398,272.00 AT 58)

NOTE: 969,335 PESETAS PAID TO JOP BY LOCAL AGENT. FURTHER
PAYMENT BEING HELD IN ABEYANCE PENDING RESOLUTION OF THE ISSUE.
7. JOP HAS SUBMITTED INVOICES TO MAPOR FOR BOTH THE CONTAINERIZED
AND NON-CONTAINERIZED CARGO SINCE FEB 1971. HOWEVER, JOP
HAS NOT INSISTED ON NON-CONTAINERIZED BILLINGS BEING PLACED IN
ESCROW SINCE THE MAR 1972 BILLINGS AND NO MONIES HAVE BEEN
DEPOSITED ON CONTAINERIZED CARGO BEING PLACED IN ESCROW AND TO DATE
NONE ARE IN ESCROW. HOWEVER, AS INDICATED ABOVE, THE NEW AGENT FOR
GRACE PRUDENTIAL RECENTLY INADVERTENTLY PAID JOP 969,335 PESETAS.
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ON 17 FEB 1973 THEY NOTIFIED JOP THAT NO FURTHER PAYMENTS WOULD
BE MADE.
8. USATTU AND 16TH AIR FORCE OFFICIALS REPORTED THIS MATTER
TO JUSMG-MAAG WHEN JOP FIRST INDICATED, DURING THE LATTER PART OF
CY 1970. THAT THEY INTENDED TO BILL THE U.S. GOVERNMENT FOR THIS
CHARGE. THE MATTER WAS CONSIDERED IN A MEETING OF THE PERMENENT
SECRETARIAT IN 1971. THE SPANISH ADVISED THAT THE QUESTION OF
LEGALITY OF THIS TARIFF WOULD BE HELD IN ABEYANCE UNTIL SUCH TIME
AS A NEW FISCAL ANNEX TO THE 1970 AGREEMENT OF FRIENDSHIP AND
COOPERATION WAS NEGOTIATED. ACCORDINGLY, IT APPEARS THAT THIS
PROBLEM WILL NOT BE RESOLVED UNTIL A NEW FISCAL AGREEMENT IS
NEGOTIATED
D. NO FURTHER ACTION IS ANTICIPATED BY THIS HEADQUARTERS
AT THIS TIME.
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MONTLLOR

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Message Attributes

Automatic Decaptioning: X
Capture Date: 11 MAY 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TARIFF LAW, IMPORTS, MILITARY EQUIPMENT, AMERICAN SELLING PRICE
Control Number: n/a
Copy: SINGLE
Draft Date: 16 NOV 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973MADRID06749
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: n/a
From: MADRID
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731166/abqcefwo.tel
Line Count: 159
Locator: TEXT ON-LINE
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: thigpegh
Review Comment: n/a
Review Content Flags:
Review Date: 20 AUG 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <20-Aug-2001 by maustmc>; APPROVED <01-Feb-2002 by thigpegh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: EIND, SP, US
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005